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# PRELIMINARY DRAFT

## No. 3539

PREPARED BY  
LEGISLATIVE SERVICES AGENCY  
2011 GENERAL ASSEMBLY

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### DIGEST

**Citations Affected:** IC 7.1-5-12; IC 12-7-2-178.8; IC 12-24-2-8; IC 16-18-2; IC 16-41-37.

**Synopsis:** Smoking ban in public places. Prohibits smoking: (1) in public places; (2) in enclosed areas of a place of employment; (3) in certain state vehicles; and (4) within 12 feet of a public entrance to a public place or an enclosed area of a place of employment. Requires the alcohol and tobacco commission to enforce this prohibition. Makes it a Class B infraction to violate the smoking prohibition and a Class A infraction if the person has three prior unrelated judgments for violations. Prohibits firing or refusing to hire a person for reporting a violation or exercising any right or performing any obligation under the smoking prohibitions. Repeals the current clean indoor air law that prohibits smoking in public buildings.

**Effective:** July 1, 2011.



A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 7.1-5-12 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

**Chapter 12. Prohibition on Smoking**

**Sec. 1.** As used in this chapter, "public place" means an enclosed area in which the public is invited or permitted.

**Sec. 2.** As used in this chapter, "smoking" means the:

- (1) carrying or holding of a lighted cigarette, cigar, or pipe or any other lighted smoking equipment; or
- (2) inhalation or exhalation of smoke from lighted smoking equipment.

**Sec. 3. (a)** Smoking is prohibited in the following:

- (1) A public place.
- (2) Enclosed areas of a place of employment.
- (3) A vehicle owned, leased, or operated by the state if the vehicle is being used for a governmental function.
- (4) Within twelve (12) feet of a public entrance to a public place or an enclosed area of a place of employment.

**(b)** An employer shall inform each of the employer's employees and prospective employees of the smoking prohibition in the place of employment.

**(c)** An owner, an operator, a manager, or another individual with authority shall remove ashtrays or other smoking paraphernalia from areas where smoking is prohibited under this chapter. However, this subsection does not prohibit the display of ashtrays or other smoking paraphernalia that are intended only for retail sale.

**Sec. 4. (a)** The commission shall enforce this chapter.

**(b)** The department of health, local health department, and division of fire and building safety may enforce this chapter.

**(c)** The commission, department of health, local health



department, and division of fire and building safety may inspect premises that are subject to this chapter to ensure that the person responsible for the premises is in compliance with this chapter.

Sec. 5. (a) The official in charge of a public place shall do the following:

(1) Post conspicuous signs that read "Smoking Is Prohibited By State Law" or other similar language.

(2) Request an individual who is smoking in violation of this chapter to refrain from smoking.

(3) Remove from the public place an individual who is smoking in violation of this chapter and fails to refrain from smoking after being requested to refrain from smoking.

(b) The proprietor of a restaurant shall post conspicuous signs at each entrance to the restaurant informing the public that smoking is prohibited in the restaurant.

Sec. 6. A person who smokes in an area where smoking is prohibited by this chapter commits prohibited smoking, a Class B infraction. However, the violation is a Class A infraction if the person has at least three (3) prior unrelated judgments for a violation of this chapter.

Sec. 7. An owner, a manager, or an operator of a public place or place of employment that fails to comply with this chapter commits a Class B infraction. However, the violation is a Class A infraction if the person has at least three (3) prior unrelated judgments for a violation under this chapter.

Sec. 8. A person, an owner, a manager, or an employer may not discharge, refuse to hire, or in any manner retaliate against an individual for reporting a violation of this chapter or exercising any right or satisfying any obligation under this chapter.

Sec. 9. This chapter does not prohibit a county, city, town, or other governmental unit from adopting an ordinance more restrictive than this chapter.

SECTION 2. IC 12-7-2-178.8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 178.8. "Smoking", for purposes of IC 12-24-2-8, has the meaning set forth in ~~IC 16-41-37-3~~. **IC 7.1-5-12-2.**

SECTION 3. IC 12-24-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) Notwithstanding IC 12-27-3-3, the superintendent of a state institution has complete authority to regulate smoking (as defined in ~~IC 16-41-37-3~~) **IC 7.1-5-12-2)** within the state institution.

(b) A physician licensed under IC 25-22.5 may prescribe nicotine as is medically necessary for a resident of a state institution.

SECTION 4. IC 16-18-2-10, AS AMENDED BY P.L.101-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) "Agency", for purposes of IC 16-23.5, has



1 the meaning set forth in IC 16-23.5-1-2.

2 (b) "Agency", for purposes of IC 16-40-5, has the meaning set forth  
3 in IC 16-40-5-1.

4 (c) "Agency", for purposes of IC 16-41-37, has the meaning set forth  
5 in IC 16-41-37-1.

6 SECTION 5. IC 16-41-37-4 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. A person who  
8 smokes:

9 (1) in a public building, except in an area designated as a smoking  
10 area under section 5 of this chapter;

11 (2) in the retail area of a grocery store or drug store that is  
12 designated as a nonsmoking area by the store's proprietor;

13 (3) in the dining area of a restaurant that is designated and posted  
14 as the restaurant's nonsmoking area by the restaurant's proprietor;  
15 or

16 (4) engages in smoking (as defined in IC 7.1-5-12-2) in a school  
17 bus during a school week or while the school bus is being used for  
18 a purpose described in section 2.3(3) of this chapter commits a  
19 Class B infraction. However, the violation is a Class A infraction  
20 if the person has at least three (3) previous unrelated judgments  
21 for violating this section that are accrued within the twelve (12)  
22 months immediately preceding the violation.

23 SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE  
24 JULY 1, 2011]: IC 16-18-2-298; IC 16-18-2-318.1; IC 16-18-2-332;  
25 IC 16-41-37-1; IC 16-41-37-2; IC 16-41-37-3; IC 16-41-37-3.1;  
26 IC 16-41-37-5; IC 16-41-37-6; IC 16-41-37-7; IC 16-41-37-8.

